TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 205.

WILLIAM J. TURPIN, APPELLANT,

vs.

J. B. LEMON AND A. W. LEMON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED NOVEMBER 1, 1902.

(17,956.)

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vs.

J. B. LEMON AND A. W. LEMON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 11, 1901.

a In the Circuit Court of the United States for the District of West Virginia, in the Fourth Circuit, at Parkersburg.

WILLIAM J. TURPIN
v.
J. B. LEMON and A. W. LEMON. } In Equity.

Merrick & Smith, Parkersburg, W. Va., counsel for complainant.
McCluer & Forrer, Parkersburg, W. Va., counsel for defendants.

1 Be it remembered, that, heretofore, to wit, on the 15th day of April, 1899, came William J. Turpin, by counsel, and filed his bill of complaint against J. B. Lemon and A. W. Lemon, which said bill of complaint is is the words and figures following, to wit:

Bill of Complaint.

The bill of complaint filed in said court by William J. Turpin, a citizen of the State of Pennsylvania, against J. B. Lemon and A. W. Lemon, citizens of the State of West Virginia.

To the honorable judges of the circuit court of the United States for the district of West Virginia:

Your orator, the said Wm. J. Turpin, says that he is, and for a number of years past has been, a citizen of the State of Pennsylvania, and that the defendants J. B. Lemon and A. W. Lemon are citizens of the State of West Virginia.

Your orator also says that on the 30th day of April, 1874, he received from Virginia S. Hall, executrix and William H. Hall, executor of the last will of Smith C. Hall, a deed conveying two hundred and twenty-five acres of land lying on the waters of Dutchmen run in the county of Ritchie and State of West Virginia, which deed is filed herewith as Exhibit No. 1. That your orator became thereby the owner in fee-simple of said tract of land and has so continued to the present time except for the pretended tax sales hereinafter mentioned.

That, in the year 1879, by a pretended tax sale made by the sheriff of said county, at that time, one hundred acres of said land was sold to D. McGregor and James McKinney, and by said pretended tax sale it was claimed that the quantity of land owned by your orator was reduced to one hundred and twenty-five acres of said
2 tract of land and thereafter, for some years, there continued to be assessed upon the assessor's books of said county of Ritchie, a tract of one hundred and twenty-five acres, lying on Dutchmen's and Laurel runs, in the district of Murphy, in said county, assessed with taxes in the name of your orator. And the same appears to have been so assessed in the years 1883 and 1884, as will appear by abstracts from the assessor's books for those years, marked Exhibits Nos. 2 and 3 respectively and filed as part hereof. That afterwards, as appears from the records of said county, there

was a pretended return of delinquency for the taxes charged in your orator's name upon said land as aforesaid, as will appear from abstracts of the delinquent lists for those years filed herewith as Exhibits Nos. 4 and 5 respectively.

That after the return of delinquency, as aforesaid, it is claimed that the sheriff of said county of Ritchie, made sale of said one hundred and twenty-five acres of land for the taxes of 1883 and 1884 charged to your orator as aforesaid upon said land, and that such sale was made on the 12th day of January, 1886. All that appears of record with regard to such sale and with regard to the authority for making such sale is shown by the abstract from the lists of sales returned by J. B. Hallom, sheriff of said county of Ritchie, for the sales of real estate sold in the month of January, 1886, and which is filed herewith as Exhibit No. 6.

Your orator further shows that after the return of said pretended sale, as aforesaid, by the said sheriff, to wit, on the 3rd day of February, 1887, a pretended tax deed was made by G. W. Amos, clerk of the county court of said county of Ritchie, to the said J. B. Lemon and A. W. Lemon, purporting to convey a certain tract of land containing one hundred and twenty-five acres on Dutchmen's
3 and Laurel run- as aforesaid, and described in said deed by the following description:

Beginning at a sugar tree, thence N. 48 W. 27 poles to a buckeye; N. 24½ W. 8 poles to a buckeye and pointers; N. 72 W. 38 poles to a maple; N. 4½ W. 56 poles to a gum; N. 41½ W. 36 poles to a sycamore; N. 54 W. 37 poles to —; N. 43 E. 6 poles to a gum, corner to F. Lemon; thence S. 65 W. 86½ poles to a stake; S. 23 E. 180½ poles to a stake; N. 65 E. 130½ poles to the beginning, containing 125 acres, be the same more or less. A copy of said deed is filed herewith as Exhibit No. 7; and your orator charges that such description is not sufficiently definite to locate said land and rendered the said deed void for uncertainty.

Your orator shows that for many years he has been absent from the said county of Ritchie and State of West Virginia, and has resided out of the same, not being a resident of the State of West Virginia or a citizen thereof, and that for many years your orator has been in very poor health and much of the time since the time of said pretended tax sale, your orator has been unfit to attend to business or look after the same. And while, owing to lapse of time which has past since the making of said sale, it may have seemed that your orator was neglecting his business and property interests in permitting such sale to be made and to go for this length of time without legal proceedings to set the same aside, yet your orator now states his illness and his consequent incapacity to look after his business interests, as a good and valid reason therefor.

Your orator further shows that the said tax sale and the deed made thereunder were invalid, illegal, null and void and passed no title to the said J. B. Lemon and A. W. Lemon for said one hundred and twenty-five acres of land, and the said deed is a cloud
4 upon the title of your orator to said land and should be set aside and declared null and void.

Your orator shows that the following defects appear of record with regard to said sale:

It nowhere appears from the return of said sale made by the said sheriff as aforesaid, that the said land had been certified to him to be sold by the auditor of the State of West Virginia, as required by law.

Second. That it nowhere appears in the return or certificate of said sheriff with regard to said sale that he published or posted the notice of the sale for taxes, as required by law and as required by the act of the legislature for the year 1882, under which it is presumed said sheriff was pretending to act.

Third. That it nowhere appears in said return or certificate of sales made by said sheriff, that said sale was made at a time at which he would be authorized by the said law to make such sale.

Fourth. That it nowhere appears in such return of sales or the certificate thereto that such sale was at a place at which the said sheriff was authorized to make it.

Fifth. That it nowhere appears by said return of sales, or the certificate thereto, that such sale was made at a public sale; that is, at public auction or outcry.

Sixth. That it is nowhere made to appear in said return of sales or in the certificate or affidavit thereto, that said land was sold to a person or persons who would take the least number of acres and pay the taxes thereon.

Seventh. There is no statement in said return of sales or in any certificate or affidavit attached thereto by said sheriff, either in general or special terms, that said sale was made in accordance with the provisions of said law, or of the laws of the State of West Virginia.

Your orator further shows that the said deed is void for the additional reasons that it is not in accordance with the returns of sale and the affidavit and certificate attached thereto, in this: that said deed states that said sale was made pursuant to the statute in such case made and provided, when there was no statement contained in the affidavit or return of the sheriff in any form that said sale was made pursuant to the statute in such case made and provided. And in this: that said deed recites that the said tax sale was commenced, continued and completed according to law, when such return of sale and the affidavit and certificate thereto, do not show or state either in general or special terms that said sale was commenced, continued and completed according to law. And such statements in said deed contained, as the record evidence shows, were without foundation in fact.

And in this: that the said deed alleges that the said J. B. Lemon and A. W. Lemon caused a roport to be made to the clerk of the county court specifying the metes and bounds of the real estate so purchased and giving a description thereof sufficient to identify the sale, as required by law. When, in fact, no such report is shown of record and no such report was recorded with said deed, as required by the statute in said case made and provided; and your orator charges that no such report was ever made, and that no such report

was ever recorded, as required by law; and your orator charges that the said J. B. Lemon and A. W. Lemon obtained and caused the said clerk to make the said deed without any such report and to place it upon record without such report. And your orator charges
6 that as the deed was made without such report and without recording such report, that the said deed conveyed no title to the said land to the said J. B. Lemon and A. W. Lemon. And that the said sale and deed, made under the circumstances and with the defects hereinbefore set forth and charged, were wholly null and void and passed to the said purchasers at said pretended tax sale no title, right or interest in or to the said one hundred and twenty-five acres of land.

Your petitioner further shows that the said tax sale and the said tax deed are void and without warrant *of* authority of law in this: that the action of the said sheriff and of the said clerk in making the said pretended tax sale and the said tax deed in the form and manner aforesaid, did not, under the first section of the fourteenth amendment of the Constitution of the United States, constitute due process of law and that, under the Constitution of the United States and under the constitution of the State of West Virginia, they were not sufficient to take away the property of your orator.

Your orator further shows that the acts of the legislature of the State of West Virginia, as contained in the Acts of 1882 and as now incorporated in the Code of West Virginia of 1891, do not provide with regard to the sale of lands returned delinquent for taxes and the making of deeds under such sales, what is due process of law as indicated by the constitution of the State of West Virginia and of the Constitution of the United States of America. And any sales and deeds made under such act and pursuant thereto are void as depriving persons of their property without due process of law, in this: that, while said acts provided specifically for certain acts of the officers mentioned, the sheriff and the clerk respectively, yet the same act, as now found in section 25 of chapter 31 of the Code of West Virginia of 1891, and as appears in the said section 25 of
7 the said Acts of 1882, chap. 130, in effect provide that any error, mistake, irregularity in the acts of such officers, the sheriff and the clerk as aforesaid, in making such sales and deeds, shall not effect the validity of such sales and of such deeds; thereby doing away with the requirements provided in the previous part of the act in making such sales and deeds, and leaving it entirely with each individual sheriff and clerk as to what portion of said law he will comply with in making such sale or deed, or whether he shall fulfill any portion of the same.

And your orator charges again that the act, so framed, does not provide for due process of law in the making of tax sale and deeds and any sales or deeds made thereunder are null and void and that, as it is apparent that the tax sale of January 12, 1886, made as aforesaid by the said sheriff of Ritchie county of said one hundred and twenty-five acres of land, and said deed made by said clerk as aforesaid, were made under the provisions of said act of 1882 the

same are null and void as having been made without due process of law and depriving your orator of his property without due process of law.

Your orator further shows that, by said act and by chap. 31 of sec. 12 of the Code of West Virginia, the sheriff was authorized to make his return of sales without showing in what way he had made his sales; without showing that he had published and posted the notice required by law; without showing that he had made the sale at a time and at a place required by law; and without showing that he had made said sale as a public sale; without showing that at such sale the land had been sold to the person who would take the least number of acres and pay the taxes charged upon the land, and without showing, even in general terms or by general statement, that such sale had been made in accordance with the laws or in accordance with the rules and regulations prescribed by the law under which such officer acted. So that, by the law the return of
8 sales would not show and could not show that the law had been complied with. And when such return of sale should be made under the law to the clerk of the county court and filed and recorded by him, there would not appear in his office, or anywhere else, a return or statement of the officer making the sale, that the law had been complied with in the respects aforesaid, and no general statement would appear, from the return of such officer, that the law had been complied with. Yet, the said act of 1882 and the sections 19 and 25 of said act, and of said chap. 31 of the Code of West Virginia, authorize the clerk of the county court to make a deed to the purchaser reciting that such sale was made in pursuance of the statute in such case made and provided, and to state in such deed that at said sale, "so commenced, continued and completed according to law," the certain person became the purchaser of the tract of land; such deed, being made without any evidence whatever of the facts therein set forth and without any provisions in the law for such evidence, although said deed should be made, not by the officer who made the sale, but by another distinct and separate officer having nothing to do with the same.

And said act, as already stated, further provides that no irregularity, error or mistake of the person making the sale, or the failure of any officer mentioned in said law to do or perform any act or duty required to be done for said sale should avoid such deed or such sale.

Your orator, therefore, is advised and now charges that a sale or deed made under the provisions of such law is void under the provisions of the first section of the fourteenth amendment of the Constitution of the United States and the provisions of the constitution of the State of West Virginia, as depriving your orator of his property without due process of law. And your orator charges
9 again, that the pretended sale and deed hereinbefore mentioned and referred to, was and is void as depriving your orator of his property without due process of law. And your orator charges that when the said deed, so made without the making of the report required by sec. 18 of the said act of 1882, chapter 130, and

without its being recorded, as required by said section, rendered said deed invalid and without effect and that said deed made under such circumstances did not pass to the defendants the title to said property.

Your orator further shows that the value of said tract of one hundred and twenty-five acres of land at the present time is at least two thousand and five hundred dollars; and that the land, when sold, was worth at least one thousand ($1,000.00) dollars. And that when it was sold for the sum of fifteen and $\frac{27}{100}$ dollars to the defendants it was sold for a grossly inadequate price and the said sale should be set aside for that reason, as well as for the reasons already set forth herein.

Your orator further shows that on the 21st day of February, 1899, the attorney and agent of your orator, by appointment, met the defendant, John B. Lemon, representing the defendants, at the town of Harrisville, in the said county of Ritchie, and there tendered to him the sum of one hundred and seventy-six and $\frac{50}{100}$ dollars to cover the amount of the said taxes paid by the said defendants in the purchase of said land and of all taxes since paid by them upon said land and the costs of all surveys, report and deed, as claimed by the said Lemon. That the said Lemon refused to receive the said money at that time, but your orator now shows that he is ready to pay into court, whenever required by the court, the said sum of money or such sum of money as may be ascertained to be proper to cover said taxes, interest and costs of survey. But your
10 orator further shows that at the time the said land was sold for taxes, there was a very large amount of valuable timber growing thereon, suitable and valuable for manufacture of timber, staves and other wood products, and that since the said defendants purchased said land at said pretended tax sale and, perhaps, since they obtained the said pretended deed from the clerk of the county court aforesaid, they have casually entered upon said land from time to time and cut thereon large quantities of timber and removed the same from said land.

Your orator shows that the defendants have never improved the said land or cultivated it, or enclosed it, and have never had any actual possession of said land such as is necessary to give title to by adverse possession. But have only, from time to time, casually entered upon said land, or portions thereof, for the purpose of cutting and removing timber therefrom.

In consideration whereof, and inasmuch as your orator is without remedy except in a court of equity, he prays that the said defendants may be made defendants to this bill, that the summons of your honorable court do issue against them as such, that they be severally required to answer the allegations of this bill as fully and particularly as if the same were here again repeated in the form of interrogatories and to make such answer under oath, that there be granted to your orator a decree declaring the said sale and deed as made without due process of law; and declaring the same to be null and void and a cloud upon the title of your orator to the said one hundred and twenty-five acres of land and setting aside the

same, and decreeing that the said defendants are without right, title or interest in said land; and that the said defendants, upon a final hearing of this case, be enjoined from in any way interfering with the possession of the plaintiff of the said tract of land and of
11 his rights therein. And that such other and general relief may be granted to your orator as to the court may seem meet and to equity appertains and, as in duty bound, he will ever pray, etc.

WILLIAM J. TURPIN,
By Counsel.

MERRICK & SMITH,
Solicitors for Complainant.

UNITED STATES OF AMERICA, }
Western District of Pennsylvania, } *ss:*

Before the undersigned personally appeared William J. Turpin who being duly sworn deposes and says that the facts set forth in the said bill are true so far as they purport to be of his own knowledge, and so far as they purport to be stated on information and belief he believes them to be true.

WILLIAM J. TURPIN.

Subscribed and sworn this 13th day of April, 1899, at Pittsburgh, in said district, before me.

WM. T. LINDSEY,
[SEAL.] *U. S. Com'r, W. D. Pa.*

UNITED STATES OF AMERICA, }
Western District of Pennsylvania, } *ss:*

At the city of Pittsburgh, in the county of Allegheny, and district aforesaid, this 13 day of April, in the year 1899, personally appeared before me William T. Lindsey, a United States commissioner for said district, the above-named William J. Turpin, and made oath that the facts set forth in the foregoing bill, so far as they purport to be stated of his own knowledge, are true; and so far as they purport to be stated on information and belief, he believes them to be true.

Given under my hand this 13th day of April, in the year
12 one thousand eight hundred and ninety-nine.

WM. T. LINDSEY,
[SEAL.] *U. S. Commissioner for the Western District of Pennsylvania.*

EXHIBIT No. 1 WITH BILL.

(Filed April 15, 1899.)

This deed, made this 30th day of April 1874, between Virginia S. Hall, executrix, and William H. Douglass, executor of the last will and testament of Smith C. Hall, both of the county of Ritchie and

State of West Virginia, of the first part, and William J. Turpin, of said county and State, of the second part, witnesseth: That for and in consideration of one dollar in hand paid by said William J. Turpin to the parties of the first part, the receipt whereof is hereby acknowledged, and the further consideration of an undivided interest of two hundred and twenty-five acres of land in a tract of nine hundred and twenty-five acres of land situated on Laurel run and branches of Dutchman's run in the county of Ritchie and State of West Virginia, which said undivided interest was derived by said William J. Turpin, by deed of the 18th day of February 1867, from Smith C. Hall and wife, the said parties of the first part do grant and convey unto the said party of the second part a certain tract or parcel of land lying and being situated in the said county of Ritchie on the waters of Dutchman's run, a tributary of the South fork of Hughes river, bounded as follows, to wit: Beginning at a sugar tree, thence N. 48° W. 27 poles to a buckeye; thence N. 24½° W. 8 poles to two buckeye pointers; thence N. 72° W. 38 poles to a maple; thence N. 4½° W. 56 poles to a gum; thence N. 41½° W. 36 poles to a sycamore standing by Dutch-
13 man's run; thence N. 54° W. 37 poles to a red oak on said run bank; thence N. 43° E. 6 poles to a linn, corner of a survey of 609 acres made for Frederick Lemmon; thence with one line of the same S. 65° W. 112 poles crossing said Dutchman's run to a dogwood, corner to a survey of 100 acres made for said Lemmon; thence with a line of the same S. 67° W. 62 poles to a stake in said line; thence S. 23° E. 184 poles to a stake; thence N. 65° E. 218 poles to the beginning, containing 225 acres more or less. The said 225 acres being part and parcel of a large tract of 925 acres of land, situated on Laurel run and branches of Dutchman's run in the county and State aforesaid, and patented on the 1st day of March 1859 by the Commonwealth of Virginia to John A. Lowther and conveyed by him to said Smith C. Hall, on the 17th of November, 1860. And the said Virginia S. Hall, for herself and as executrix as aforesaid, covenants that she will warrant generally, and said William H. Douglass, executor, covenants that he will warrant specially the property hereinbefore conveyed.

The said party of the second part to have and to hold unto himself, his heirs and assigns forever, the said tract of 225 acres of land.

It is understood that this conveyance and one bearing even date herewith, from said Turpin and his wife to the said first parties are to operate as a division between said Turpin and said first parties of the said tract of 925 acres, an undivded interest of 225 acres in which was heretofore conveyed by said Smith C. Hall to said Turpin by deed of 18th of February 1867.

Witness the following signatures and seals the day and date first above written.

VIRGINIA S. HALL, *Executrix.* [SEAL.]
WM. H. DOUGLASS, *Executor.* [SEAL.]

Name of the person who, by himself or by his tenant, has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.		Name
			Acres.	Fractions.	nam land cour plac lies.
1.	2.	3.	4.	5.	
Tarpin, Wm. J.....	Ill., *Ritchie Co.*.....	In fee ...	125	...	Dutch

STATE OF WEST VI
Ritchie Count

I, W. R. Mese
true copy of so mu
1883, as the same a
Given under m
Teste:
[SEAL.]
(Int. rev. 10c.

Year 1883 *in Murphy District, of the County of Ritchie, with Amount of Taxes Thereon for the said Year, within the Second Assessment District of said County.*

f acres ract.	Name of the tract, if it has a name; local description of land, reference to water-courses, mountains, or other places on or near which it lies.	Distance and bearing from court-house.		Value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	Amount of tax for State purposes at 25 cents on every $100 value thereof.	Amount of tax for free-school purposes at 10 cents on every $100 value thereof.	Total tax for State and State school purposes.	Explanations.	County levy.	District levy.		
Fractions.		Bearing from C. H.	Miles distant.							From whom, when, and how the owner derived the land, where that is known, with a note and explanation of any alteration made, showing why and upon what authority it was made.	Being 40 cts. on every $100 value thereof.	Being 50 cts. on every $100 value thereof for school purposes.	Being 40 cts. on every $100 value thereof for building purposes.	Being 50 cts. on every $100 value thereof for road purposes.
5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.
...	Dutchman & Laurel run	S. W.	20	2 20	.....	275	.69	.28	.97	Virginia S. Hall.....	1 10	1 38	1 10	1 38

TE OF WEST VIRGINIA, } *To wit:*
Ritchie County, }

I, W. R. Meservie, clerk of the county court of Ritchie county, in the State aforesaid, do certify that the foregoing is a copy of so much of the land books as pertains to a tract of land charged in the name of William J. Turpin for the year 3, as the same appears of record in my office.

Given under my hand and seal of said court this 6th day of April, 1899.

Teste:

[SEAL.]

W. R. MESERVIE, *Clerk.*

(Int. rev. 10c. stamp, cancelled.)

EXHIBIT No. 3 WITH BILL.

(Filed April 15, 1899.)

Table of Tracts of Land for the Year 1884 *in Murphy District, of the County of Ritchie, with Amount of Taxes Thereon for the sa*

Name of the person who, by himself or by his tenant, has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.		Name of the tract, if it has a name; local description of land, reference to water-courses, mountains, or other places on or near which it lies.	Distance and bearing from court-house.		Value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.
			Acres.	Fractions.		Bearing from C. H.	Miles distant.			
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
Turpin, Wm. J.....	Illinois.....	In fee...	125	.....	Dutchman & Laurel.....	S. W.	20	2 20	....	275

STATE OF WEST VIRGINIA, *Ritchie County,* } *To wit:*

I, W. R. Meservie, clerk of the county court of Ritchie county, in the State aforesaid, do
true copy of so much of the land books as pertains to a tract of land charged in the name of W
1884, as the same appears of record in my office.

Given under my hand and seal of said court this 6th day of April, 1899.

Teste:

[SEAL.]

(Int. rev. 10c. stamp, cancelled.)

EXHIBIT No. 3 WITH BILL.

(Filed April 15, 1899.)

in Murphy District, of the County of Ritchie, with Amount of Taxes Thereon for the said Year, within the Second Assessment District of said County.

Name of the tract, if it has a name; local description of land, reference to water-courses, mountains, or other places on or near which it lies.	Distance and bearing from court-house.		Value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	Amount of tax for State purposes at 20 cents on every $100 value thereof.	Amount of tax for free-school purposes at 10 cents on every $100 value thereof.	Total tax for State and State school purposes.	EXPLANATIONS. From whom, when, and how the owner derived the land, where that is known, with a note and explanation of any alteration made, showing why and upon what authority it was made.	County levy.	District levy.		
	Bearing from C. H.	Miles distant.								Being 35 cts. on every $100 value thereof.	Being 50 cts. on every $100 value thereof for school purposes.	Being 40 cts. on every $100 value thereof for building purposes.	Being 50 cts. on every $100 value thereof for road purposes.
6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.
Dutchman & Laurel.....	S. W.	20	2 20	.....	275	.55	.28	.83	Virginia S. Hall.....	.97	1 38	1 10	1 38

ST VIRGINIA, } *To wit:*
County, }

Meservie, clerk of the county court of Ritchie county, in the State aforesaid, do certify that the foregoing is a so much of the land books as pertains to a tract of land charged in the name of William J. Turpin for the year ame appears of record in my office.
der my hand and seal of said court this 6th day of April, 1899.

.]
10c. stamp, cancelled.)

W. R. MESERVIE, *Clerk.*

14 STATE OF WEST VIRGINIA, } *To wit:*
County of Ritchie, }

I, R. S. Blair, a notary public in and for the county and State aforesaid, do certify that Virginia S. Hall, executrix, and for herself, and William H. Douglass, executor, whose names are signed to the foregoing writing, bearing date on the 30th day of April, 1874, this day personally appeared and acknowledged the same before me in my county aforesaid.

Given under my hand this 7th day of May 1874.

R. S. BLAIR,
Notary Public.

WEST VIRGINIA:

RITCHIE COUNTY CLERK'S OFFICE, *August 6th*, 1874.

The foregoing deed was this day admitted to record in said office in Deed Book No. 17 pages 214 & 215.

Teste:

G. W. AMOS, *Clerk.*

(See tables marked pages 15 and 16.)

EXHIBIT NO. 2 WITH BILL.

(Filed April 15, 1899.)

EXHIBIT No. 4 WITH BILL.

List of Real Estate in the County of Ritchie Delinquent for the Non-payment of Taxes Thereon for the Year 1883.

Name of person charged with taxes.	Estate held.	Quantity of land.	Description and location of land.	Distance and bearing from court house.	State tax for State purposes.	State tax for school purposes.	County tax for all purposes.	District taxes.			Why returned delinquent.
								Am't of tax for school purposes.	Am't of tax for building purposes.	Am't of tax for road purposes.	
Murphy district.											
Turpin, Wm. J.....	In fee..	125	Dutchman & Laurel run..	.....	.69	.28	1 10	1 38	1 10	1 38	No property found.

I, D. F. Haymond, sheriff of the county of Ritchie do swear that the foregoing list is, I verily believe, correct and just, and that I have received no part of the taxes for which the real estate therein mentioned is returned delinquent, and that I have used due diligence to find property, within my county liable to distress for the taxes, but have found none. D. F. HAYMOND, *Sheriff.*

Sworn to and subscribed before me this 2d day of June, 1884.

G. W. AMOS, *Clerk County Court of Ritchie Co., W. Va.*

STATE OF WEST VIRGINIA, *ss:*

I, G. W. Amos, clerk of the county court of Ritchie county in the State aforesaid, certify that the foregoing is a true copy of the sheriff's list of delinquent real estate for the year 1883, as the same is on file in my office.

Teste:

G. W. AMOS, *Clerk.*

STATE OF WEST VIRGINIA, *Ritchie County,* } *To wit:*

I, W. R. Meservie, clerk of the county court of Ritchie county, in the State aforesaid, do hereby certify that the foregoing is a true copy of so much of the record of delinquent real estate as pertains to a tract of land returned delinquent in the name of William J. Turpin for the non-payment of taxes thereon for the year 1883, as the same appears of record in my office in the Record of Delinquent Real Estate No. 1 page 34.

Given under my hand and seal of said court this 6th day of April, 1899.

[SEAL.] Teste:

W. R. MESERVIE, *Clerk.*

(Int. rev. 10c. stamp, cancelled.)

EXHIBIT No. 5 WITH BILL.

List of Real Estate in the County of Ritchie Delinquent for the Non-payment of Taxes Thereon for the Year 1884.

Name of person charged with taxes.	Estate held.	Quantity of land.	Description and location of land.	Distance and bearing from court-house.	State tax for State purposes.	State tax for school purposes.	County tax for all purposes.	District taxes.			Why returned delinquent.
								Dist. tax for school purposes unpaid.	District tax for building purposes unpaid.	District tax for road purposes unpaid.	
Murphy district.											
Turpin, William J...	In fee..	125	Dutchman & Laurel.....	.....	.55	.28	.97	1 38	1 10	1 38	No property found.

I, D. F. Haymond, late sheriff of the county of Ritchie do swear that the foregoing list is, I verily believe, correct and just; that I have received no part of the taxes for which the real estate therein mentioned is returned delinquent, and that I have used due diligence to find property within my county liable to distress for the said taxes but have found none.

D. F. HAYMOND, *Late Sheriff.*

Sworn to and subscribed before me this 28th day of May, 1885.

G. W. AMOS, *Notary Public for Ritchie County, West Va.*

STATE OF WEST VIRGINIA:

I, G. W. Amos, clerk of the county court of Ritchie county in the State aforesaid certify that the foregoing is a true copy of the sheriff's list of delinquent real estate for the year 1884, as the same appears on file in my office.

Teste:

G. W. AMOS, *Clerk.*

STATE OF WEST VIRGINIA, *Ritchie County,* } *To wit:*

I, W. R. Meservie, clerk of the county court of Ritchie county, in the State aforesaid, do hereby certify that the foregoing is a true copy of so much of the record of delinquent real estate as pertains to a tract of land returned delinquent in the name of William J. Turpin for the non-payment of taxes thereon for the year 1884, as the same appears of record in my office in the Record of Delinquent Real Estate No. 1 page 38.

Given under my hand and seal of said court this 6th day of April, 1899.

[SEAL.] Teste:

W. R. MESERVIE, *Clerk.*

(Int. rev. 10c. stamp, cancelled.)

EXHIBIT No. 6 WITH BILL.

(Filed April 15, 1899.)

List of Real Estate within the County of Ritchie Sold in the Month of January, 1896, for the Non-payment of Taxes Thereon for the Years 1883 and 1884 and Purchased by Individuals.

Name of person charged with taxes.	Quantity of land charged.	Estate held therein.	Local description of land charged.	Am't of taxes due thereon for State & State school purposes, including interest & damages for what sold.		Amount of county tax due thereon, including same.		Amount of district tax due thereon, including same.		Quantity of land sold.	Date of each sale.	Name of purchaser.	Am't of purchase money paid, including interest, damages, commissions, fee for receipts, and cost of advertising.	When redeemed.	Amount of redemption money.	Remarks.
				For the year 1883.	For the year 1884.	For the year 1883.	For the year 1884.	For the year 1883.	For the year 1884.							
Murphy district.													$		$ Cts.	
Turpin, Wm. J.	125	Fee	Dutchman & Laurel run.	1 18	91	1 33	1 06	4 56	4 22	125	Jan. 12, 1886	J. B. & A. W. Lemon.	15.27			

20 I, J. B. Hallam, sheriff of the county of Ritchie do swear that the above list contains a true account of all the real estate within my county which has been sold by me to individuals during the present year for non-payment of taxes thereon for the years 1883 and 1884, and that I am not directly or indirectly interested in the purchase of any of said real estate; so help me God.

J. B. HALLAM, *Sheriff.*

Sworn and subscribed to before me this 1st day of February, 1886.

G. W. AMOS,
Notary Public for Ritchie County, West Va.

STATE OF WEST VIRGINIA, *County of Ritchie,* } *To wit:*

I, G. W. Amos, clerk of the county court of Ritchie county certify that the foregoing list of real estate together with the certificate of oath attached thereto was within 30 days after the completion of said sale, to wit: on the 1st day of February, 1886, returned to me by J. B. Hallam sheriff of said county and filed in my office, and that I have within 20 days thereafter, to wit: on the 5th day of February 1886 recorded the same in a well-bound book and the same day to wit: on the 5th day of February 1886, transmitted the original list to the auditor.

Teste:

G. W. AMOS, *Clerk.*

STATE OF WEST VIRGINIA, *Ritchie County,* } *To wit:*

I, W. R. Meservie, clerk of the county court of Ritchie county, in the State aforesaid, do hereby certify that the foregoing is a true copy of so much of the record as pertains to a tract of land sold by the sheriff of Ritchie county in the month of January, 1886, in the name of Wm. J. Turpin for the non-payment of taxes thereon for
21 the years 1883 and 1884, as the same appears in my office in Record of Delinquent Land Tax on page 64.

Given under my hand and seal of said court this 6th day of April, 1899.

Teste:

[SEAL.] W. R. MESERVIE, *Clerk.*

(Int. rev. 10c. stamp cancelled.)

EXHIBIT NO. 7 WITH BILL.

(Filed April 15, 1899.)

This deed made this 3d day of February, eighteen hundred and eighty-seven by G. W. Amos clerk of the county court of the county of Ritchie, West Virginia, of the first part and J. B. Lemmon and A. W. Lemmon of the second part:

Whereas in pursuance of the statute in such case made and provided, J. B. Hallam, sheriff of the said county did in the month of

January in the year eighteen hundred and eighty-six, commenc the sale of the real estate charged with taxes in said county and r turned delinquent therein for the non-payment of the taxes s charged thereon; and

Whereas, at said sale so commenced continued and complete according to law, the said J. B. Lemmon and A. W. Lemmon be came the purchaser- of a tract of land charged with taxes in sai county as a tract of 125 acres in the name of Wm. J. Turpin for th years eighteen hundred and eighty-three and eighteen hundred an eighty-four, for the sum of $15.27 that being the taxes interest an commissions due thereon at the date of such sale and the costs o publication and fee for the receipt of purchase-money; and

Whereas, more than one year has elapsed since the time o
22 said sale and purchase as appears by the sheriff's receipt fo the purchase-money, and the said real estate not having beer redeemed as provided for by law; and

Whereas after the expiration of the said one year, to wit: on the 14th day of January, eighteen hundred and eighty-seven, the said J. B. Lemmon and A. W. Lemmon caused a report to be made to the clerk of the county court specifying the metes and bounds of the real estate so purchased and giving a description thereof sufficient to identify the same, as required by law,

Now, therefore this indenture witnesseth: That the party of the first part for and in consideration of the premises and in pursuance of the statute in such case made and provided, has granted, bargained, and sold and by these presents doth grant bargain sell and convey to the parties of the second part their heirs and assigns forever all the real estate so purahased as aforesaid situate in the county of Ritchie on Gutchman and Laurel run bounded and described as follows, to wit:

Beginning at a sugar tree thence N. 48 W. 27 poles to a buckeye; N. 24½ W. 8 poles to a buckeye; and pointers, N. 72 W. 38 poles to a maple; N. 4½ W. 56 poles to a gum; N. 41½ W. 36 poles to a sycamore; N. 54 W. 37 poles to —; N. 43 E. 6 poles to a gum corner of F. Lemmon; thence S. 65 W. 86½ poles to a stake; S. 23 E. 180½ poles to a stake; N. 65 E. 130½ poles to the beginning containing 125 acres, be the same more or less.

To have and to hold the said real estate with its premises and appurtenances unto the said J. B. Lemon and A. W. Lemon their heirs and assigns forever.

Witness the following signature and seal.

G. W. AMOS, [SEAL.]
Clerk of the County Court.

23 STATE OF WEST VIRGINIA, } *To wit:*
County of Ritchie, }

I, J. H. Lininger a notary of said county do certify that G. W. Amos, clerk of the county court whose name is signed to the foregoing writing, bearing date on the 3d day of February, 1887, has this day acknowledged the same before me in my said county.

Given under my hand this 3d day of February, 1887.

J. H. LININGER,
Notary Public.

STATE OF WEST VIRGINIA, *ss:*

I, G. W. Amos, clerk of the county court of said county, certify that the foregoing is a true copy of a deed from the clerk of the county court to J. B. Lemmon and A. W. Lemmon together with the certificate of acknowledgment thereto, duly admitted to record this 15th day of *D*ebruary, 1887.

Teste: G. W. AMOS, *Clerk.*

STATE OF WEST VIRGINIA, *Ritchie County,* } *To wit:*

I, W. R. Meservie, clerk of the county court of Ritchie county in the State aforesaid, do hereby certify that the foregoing is a true copy of a deed from the clerk of the county court of Ritchie county to J. B. & A. W. Lemmon for 125 acres of land as the same appears of record in my office in Deed Book No. 28, pages 110 & 111.

Given under my hand and the seal of said court this 6th day of April, 1899.

Teste:

[SEAL.] W. R. MESERVIE, *Clerk.*

(Int. rev. 10c. stamp, cancelled.)

Subpœna in Chancery.

24 UNITED STATES OF AMERICA, *District of West Virginia,* } *ss:*

The President of the United States of America to the marshal of the district of West Virginia, Greeting:

You are commanded to summon J. B. Lemon and A. W. Lemon, citizens of and residents in the State of West Virginia, if they be found in your district, to be and appear in the circuit court of the United States, for the district of West Virginia, aforesaid, at rules to be held in the clerk's office of said court, at Parkersburg, on the first Monday in June, next, to answer a certain bill in chancery now filed and exhibited in said court against them by William J. Turpin, a citizen of and resident in the State of Pennsylvania. Hereof you are not to fail under the penalty of the law thence ensuing. And have then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 15th day of April, A. D. 1899, and in the 123d year of the Independence of the United States of America.

Attest:

[SEAL.] L. B. DELLICKER, *Clerk.*

Memorandum.

The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of June, 1899, otherwise the said bill may be taken *pro confesso.*

L. B. DELLICKER, *Clerk.*

(Return endorsed:)

Received subpœna April 19, 1899, and served the same on J. B. Lemon and A. W. Lemon by delivering to each of them in person an office copy of the within April 20, 1899.

J. K. THOMPSON,
U. S. Marshal.
G. STOUT, *Deputy.*

Marshal fees, $6.94.

25 *Demurrer.*

(Filed June 6, 1899.)

Circuit Court of the United States for the District of West Virginia.

WILLIAM J. TURPIN, Plaintiff,
vs.
J. B. LEMON ET AL., Defendants. } In Equity.

J. B. Lemon and A. W. Lemon, defendants, come and demur to the bill of complaint filed in this cause, and for cause of demurrer say that the said bill is not sufficient in law.

2nd. And for further cause of demurrer defendants say that the complainant's bill upon its face shows that the complainant is not entitled to be entertained in a court of equity upon the relief prayed for in its bill of complaint; because, no right of action has accrued to the complainant (as appears from the said bill) within ten years next prior to the institution of this suit.

And for other good and sufficient cause of demurrer apparent on complainant's said bill.

J. B. LEMON &
A. W. LEMON,
By McCLUER & FORRER, *Att'ys.*

I, J. G. McCluer, an att'y practicing in the United States circuit court for the district of West Virginia, do certify that in my opinion the foregoing demurrer is well founded in point of law.

J. G. McCLUER, *Att'y.*

The affidavit of defendant, required by the rules of Supreme Court of United States & the circuit court of the United States for the district of West Virginia is hereby waived.

C. D. MERRICK,
Att'y for Wm. J. Turpin.

26 *Bond for Costs.*

(Filed June 30, 1899.)

Know all men by these presents: that we, William J. Turpin and E. M. Gilkeson are held and firmly bound unto the United States of America, in the penal sum of three hundred dollars, for the pay-

ment well and truly to be made we bind ourselves our heirs and administrators, firmly by these presents.

Sealed with our seals, and dated this 22nd day of June, 1899.

The conditions of the above obligation are such that, whereas, William J. Turpin has instituted his suit in equity against J. B. Lemon and A. W. Lemon, in the circuit court of the United States for the district of West Virginia; and it has been suggested on the record that the said plaintiff is a non-resident of this State, and security for costs is required; now if the said William J. Turpin shall well and truly pay all costs that may be awarded the defendant; and all such fees as may become due to the officers of said court in said suit, then this obligation to be void—otherwise to remain in full force.

WILLIAM J. TURPIN. [L. S.]
E. M. GILKESON. [L. S.]

Approved and filed this 30th day of June, 1899.

L. B. DELLICKER, *Clerk.*

At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, in said district, on the 5th day of August, 1899, the following order was made and entered of record, to wit:

27 WILLIAM J. TURPIN *vs.* J. B. LEMON and A. W. LEMON. } In Equity.

This day came the plaintiff and defendants, by their counsel, and thereupon this cause was submitted to the court upon the demurrer of the defendants to the complainant's bill, to be heard upon briefs to be filed by the respective parties within twenty days from this time.

And at another day, to wit: on the 14th day of August, 1900, the following order was made and entered of record, to wit:

WILLIAM J. TURPIN *vs.* J. B. LEMON and A. W. LEMON. } In Equity.

The demurrer of the defendants to the complainant's bill, heretofore filed, having been heretofore argued by counsel, and submitted to the court, and the court having maturely considered the same feels constrained under the rulings of the Supreme Court of the United States, to hold that the act of 1882 of the West Virginia legislature is constitutional. It is, therefore, adjudged, ordered and decreed that the said demurrer be and the same is hereby sustained, and that the complainant's bill be dismissed, and that the defendants recover from the complainant their costs about their defenses herein in this behalf expended. And thereupon the complainant, by counsel, gave notice that the complainant desired an appeal from

this decree to the Supreme Court of the United States, and presente
and asked leave to file his petition for such appeal, and said petitio
having been considered by the court, it is ordered that said appe
be allowed and that a certified transcript of the record, plea
28 ings, exhibits and all proceedings herein be transmitted
the Supreme Court of the United States of America.

And it is further ordered that the bond on said appeal be fixe
at $300.00, as the bond for costs of said appeal, which shall be give
with good security before the judge of the court.

Petition for Appeal.

(Filed August 14, 1900.)

To the honorable judges of the circuit court of the United States for the district of West Virginia:

The petition of William J. Turpin, filed in a suit in equity in said court wherein said William J. Turpin was plaintiff and J. B. Lemon and A. W. Lemon were defendants.

Your petitioner respectfully shows that, in said suit, a final decree was entered by said court upon the 14th day of August, 1900, whereby the demurrer to the bill in said case was sustained and the said bill dismissed and that he is aggrieved by the entering of said decree and desires that an appeal shall be allowed from said decree to the Supreme Court of the United States.

Your petitioner shows that the controversy in said suit raised by the bill and demurrer thereto involved the constitutionality of certain laws of the State of West Virginia and involved the question as to whether said laws were contrary to the Constitution of the United States; and that the said decree, by sustaining said demurrer and dismissing said bill, decided upon the constitutionality of said laws of West Virginia and affirmed the same. And your petitioner shows that he is entitled to have allowed an appeal from said decree to the said Supreme Court of the United States, as shown in the assignment of errors herewith filed.

29 Your petitioner therefore prays that such appeal be allowed and that a transcript of the record, pleadings and proceedings had in said case be ordered to be made and transmitted to the said Supreme Court of the United States and, as in duty bound, he will ever pray, etc.

WM. J. TURPIN,
By MERRICK & SMITH,
His Solicitors.

Assignments of Error.

(Filed August 14, 1900.)

In the Circuit Court of the United States for the District of West Virginia.

WILLIAM J. TURPIN
vs.
J. B. LEMON and A. W. LEMON. } In Equity.

The assignment of errors with the petition of William J. Turpin for an appeal from the decree of said court, entered in said case on the 14th day of August, 1900, which decree sustained the demurrer to the bill in said case and dismissed said bill.

The said William J. Turpin assigns as error in said decree and as grounds for a review and reversal of said decree, the following:

First. The court erred in sustaining said demurrer.

Second. It erred in dismissing said bill.

Third. It erred in refusing to grant the relief prayed for by the complainant's bill.

Fourth. It erred in holding the acts of the legislature of West Virginia of 1882 (now found in chapter 31 of the Code of West Virginia) in regard to sales of lands for taxes in West Virginia,
30 as constitutional.

Fifth. It erred in holding said act constitutional and sustaining said demurrer because the statutes of West Virginia providing for sales for taxes, and under which the sale complained of in the complainant's bill was made, do not provide for due process of law, and is void under the first section of the fourteenth amendment to the Constitution of the United States.

Sixth. The court erred in sustaining said demurrer because the tax sale complained of in the bill, as evidenced by the report of the sheriff, shown by the exhibits filed with the bill, was not due process of law under said first section of the fourteenth amendment to the Constitution of the United States.

Seventh. The court erred in sustaining said demurrer because the said laws of West Virginia providing for tax sales did not afford to the complainant the equal protection of the laws, as guaranteed by the first section of the fourteenth amendment to the Constitution of the United States.

Eighth. The court erred in sustaining said demurrer because no report of survey of said land was made and placed of record before the making of said deed, as required by the statutes of West Virginia.

Ninth. The court erred in sustaining said demurrer because the tax deed in the bill mentioned is void because the description therein contained is not sufficient to locate the land.

For these and other reasons, apparent of record, the complainant

says that he is aggrieved by said decree of August 13, 1900, and that the same should be reqiewed and reversed.

WILLIAM J. TURPIN,
By MERRICK & SMITH,
His Solicitors.

31 *Appeal Bond.*

(Filed September 28, 1900.)

Know all men by these presents, that we, William J. Turpin, as principal, and Edwin M. Gilkeson, as surety, are held and firmly bound unto J. B. Lemon and A. W. Lemon in the full and just sum of three hundred dollars to be paid to the said J. B. Lemon and A. W. Lemon, their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of September, in the year of our Lord one thousand nine hundred.

Whereas, lately at a circuit court of the United States for the district of West Virginia, in a suit depending in said court, between William J. Turpin, complainant, and J. B. Lemon and A. W. Lemon, defendants, a decree was rendered against the said William J. Turpin, and the said William J. Turpin having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said J. B. Lemon and A. W. Lemon, citing and admonishing them to be and appear at a United States Supreme Court to be holden at Washington, D. C., on the day in the said citation mentioned:

Now, the condition of the above obligation is such, that if the said William J. Turpin shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WM. J. TURPIN, [SEAL.]
By C. D. MERRICK,
His Attorney-in-fact.
E. M. GILKESON. [SEAL.]

Sealed and delivered in presence of—
L. V. G. MORRIS.

Approved by—
J. J. JACKSON,
U. S. Dist. Judge.

Sept. 28, 1900.

32 UNITED STATES OF AMERICA, *ss:*

The President of the United States to J. B. Lemon and A. W. Lemon, Greeting:

You are hereby cited and admonished to be and appear at a United States Supreme Court, to be holden at Washington, D. C., on the 28th day of October next, pursuant to an appeal from a decree of the circuit court of the United States for the district of West Virginia, in your favor passed in a cause in said court wherein William J. Turpin is complainant, and you are defendants to show cause, if any there be, why the decree rendered against the said William J. Turpin in said cause mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States this 28th day of September, in the year of our Lord one thousand nine hundred.

{Seal Circuit Court United States, District West Virginia, Parkersburg, West Va.}

J. J. JACKSON,
U. S. Dist. Judge.

Sept. 29, 1900.

Service of within citation accepted this 29th day of September, 1900.

J. B. LEMON AND A. W. LEMON,
By J. G. McCLUER,
Attorney for Defendants.

33 UNITED STATES OF AMERICA, *District of West Virginia,* } *ss:*

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true and complete transcript of the record and proceedings of said court in the equity cause of William J. Turpin *vs.* J. B. Lemon and A. W. Lemon, lately pending therein, as the same appears among the records of my said office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Parkersburg, in said district, this 18th day of October, A. D., 1900.

{Seal Circuit Court United States, District West Virginia, Parkersburg, West Va.}

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

Endorsed on cover: File No. 17,956. West Virginia C. C. U. S. Term No. 188. William J. Turpin, appellant, *vs.* J. B. Lemon and A. W. Lemon. Filed November 1, 1900.